

Wiretap Usage Argued Before Supreme Court

By Jay Perkins

Associated Press

Attempts by the Nixon administration to remove judicial checks from electronic eavesdropping of domestic groups could lead to the political persecution of anyone who disagreed with the President, the Supreme Court was told yesterday.

"The power which the Attorney General seeks here would legitimize a wide-spread drag-net of political opposition," attorney Arthur Kinoy told the high court. "That's what they're asking for here—the power to suspend constitutional guarantees."

Both Kinoy and Justice Department attorney Robert C. Mardian appeared before the high court to debate whether federal agents may "bug" domestic groups suspected of subversion without first getting approval from a neutral judge.

The U.S. Circuit Court of Appeals in Cincinnati has ruled that the Fourth Amendment prohibits governmental surveillance of American citizens without prior court approval. The Justice Department is appealing.

The department argued that the President can take whatever actions he deems necessary to accomplish his constitutional mandate to insure domestic tranquility and project the country from foreign and domestic enemies.

Both sides agree the government may use whatever surveillance it finds necessary against foreign enemies, but they split over whether this surveillance can be extended domestically without violating the constitutional ban against unreasonable searches and seizures.

Kinoy told the court that the televised remarks of presidential aide H. R. Haldeman several weeks ago pointed up a problem in giving a politi-

cian the final decision over who should be watched.

Haldeman accused opponents of President Nixon's war policy of consciously aiding and abetting the enemy.

"Would these critics be included in the scope of domestic surveillance?" Kinoy asked, adding sarcastically, "They are aiding and abetting the enemy."

He said affirmation of the Justice Department's position would "erase the Fourth Amendment from the domestic life of this country," and would lead to a "stifling of the political freedoms guaranteed by the First Amendment."

Mardian earlier had told the court that the Attorney General best could decide who should be placed under surveillance because he had access to all the information-gathering facilities of the government.

"We would suggest that the privacy of American citizens is better protected by limiting this authority to one man—the Attorney General—rather than to judges across the nation," Mardian said.

He said the government must use electronic surveillance if it is to stay informed of its enemy's activities.

"The Constitution is not a suicide pact," he said. "The President can't wait until the nation is facing armed insurrection before he starts to gather counter intelligence."

The case before the high court involves government wiretapping of a conversation involving Lawrence Plamondon, a White Panther accused of bombing a Central Intelligence Agency office at Ann Arbor, Mich.

Both the U.S. District Court judge and the appeals court ruled the wiretap unconstitutional because it was not approved by a court.